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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

ALARIC D. SCOTT, JR.,

Defendant and Appellant.

C087107

(Super. Ct. No. 16FE018514)

Following a jury trial, defendant Alaric D. Scott, Jr., was convicted of 13 counts of filing a false document (counts one through two, four through thirteen, and fifteen), two counts of perjury (counts three and fourteen), and two counts of failure to perform duties as a notary (counts sixteen and seventeen).¹ He was sentenced to an 11 year eight month

¹ A true finding on an enhancement for taking more than \$100,000 was struck by the trial court as inconsistent with the not true finding on an enhancement for taking more than \$100,000 but less than \$250,000.

term, consisting of six years in county jail and five years eight months under mandatory supervision.

On appeal, defendant contends the sentences on 10 of the false filing convictions must be stayed pursuant to Penal Code² section 654, two of the false filing claims should be reversed for insufficient evidence, and one false filing conviction should be reversed for lack of notice.

We shall reverse for insufficient evidence two of the false filing counts, stay execution of sentence on two other false filing counts pursuant to section 654, remand for resentencing, and otherwise affirm.

BACKGROUND

I

Prosecution Case

A

Defendant's Business Interests

Defendant was the chief financial officer and his father the chief executive officer of S & B Electrical, a business with a suspended status at the time of trial. The articles of incorporation were filed at 9017 Brydon Way, defendant's home address. The corporate address was 6750 Folsom Boulevard, Suite 239.

Vennemax Inc., B & A Trustee Company, and Citizen's Auxiliary Corporation all had certificates of no record, indicating they were not registered with the Secretary of State. Defendant admitted working for Citizen's Auxiliary as an administrator.

Defendant told an investigator that Citizen's Auxiliary was like the Neighborhood Watch. As an example, any citizen had the right to cut another's grass if it got over 12 inches and to be compensated in turn for expending one's commercial energy. Defendant

² Undesignated statutory references are to the Penal Code.

then sent an invoice to the bank, and, if the property owner did not respond, could maintain the property until the bank comes back and buys the property. While the previous owner has the titles, one can serve the mechanic's lien on the owner to let the owner know what is going on with the property.

B

Sloughhouse Road Property

Since 2001, John and Beth K. owned property on Sloughhouse Road. In 2005, the 63-acre lot was subdivided into three 21-acre parcels, and one parcel was sold. There were no structures on the property, which was fenced off by a cattle gate.

On July 22, 2013, the Sacramento County Recorder's Office (Recorder's Office) received documents related to the Sloughhouse Road property. One document was a substitution of trustee listing defendant, who signed as the beneficiary of Bank of America, as "attorney in fact" and the beneficiary (count five). The Recorder's Office also received on the same day a Deed of Reconveyance (count six) and a quitclaim deed (count seven) conveying property from John K. and the K. family to defendant. All three documents were returned as not recordable. John K. was unaware of the filings and was surprised to learn of them during his testimony.

A second quitclaim deed (count eight) from defendant for the Sloughhouse Road property was received and rejected for filing by the Recorder's Office on November 6, 2013.

On April 17, 2014, defendant filed a mechanic's lien (count one) against the property for \$20,000. At some point, John K. received the lien, a service invoice, an affidavit of adverse possession signed by defendant (counts two and three) and a \$46,000 invoice related to the property. He initially thought these were mistakes, as he owned the property free and clear and there had been no work related to it since 2005. John K., who had never met or known defendant, wrote to him and spoke by phone, but could not reach a resolution.

After John K. filed a complaint with the district attorney's office, an investigator conducted a phone interview with defendant. Defendant claimed he paid \$2 million for the property and admitted putting a \$20,000 lien on it for security services. After defendant claimed the property was being sold for \$900,000, the investigator was confused as to what defendant paid for the land or whether it was for sale. Defendant said he had a \$2 million interest in the property.

Scott Waterman took over the case after the first investigator retired, and interviewed defendant's uncle, Tobias Scott, on May 21, 2015. Defendant became aware of the interview and on May 26, 2015, filed a release of claim (count four) on the Sloughhouse Road property. Waterman could think of no reason for releasing the lien other than he had talked to defendant's uncle about John K.'s complaint as part of the investigation.

Defendant was interviewed in person by Waterman on June 2, 2015. Asked about the Sloughhouse Road property, defendant explained he had watched the property and placed a lock on the gate. The mechanic's lien was a mistake and had been released. When Waterman asked a follow-up question, defendant asked if Waterman was trying to incriminate him and then abruptly ended the interview.

C

Cornejo Road Property

The W. family owned a condominium on Dornajo Way. A lien for \$104,692.35 (count nine) on the property authorized by Vennemax was filed on August 15 2014. An amended lien (count ten) on the property was filed on the same date.

The W. family hired Debbie Starr to manage the property in May 2012. Any repair work costing more than \$150 required the family's consent. Starr never contracted with defendant nor did she enter into an agreement for \$100,000 worth of work to be done on the property.

D

La Riviera Drive Property

Jun and Mary H. owned a residential property on La Riviera Drive. They rented the property to college students. When the students moved out, the property went into foreclosure and they tried a short sale on the property. Their realtor then informed them that the sale could not go through because title was clouded by a mechanic's lien. Defendant had signed the lien (count eleven) on behalf of S & B Electrical Maintenance for \$1,500 worth of work. They neither knew defendant nor authorized him to do any work for them. According to the realtor, "To see a \$1500 lien on a property with 12 percent interest rate . . . it was insane."

The realtor also determined there was a second mechanic's lien filed on the property, accompanied by an affidavit of adverse possession which was notarized by defendant. She wrote letters regarding the liens and engaged an attorney, who also wrote a letter regarding the liens, but the liens were not removed.

E

Pacific Hills Way Property

Kenneth C. and his wife owned a rental property on Pacific Hills Way, which they bought in 2005. The property, which was kept in pristine condition, was returned to the bank in 2013 or 2014. Before returning the property, Kenneth C. personally maintained it, had never hired anyone to work on it, and had never met defendant. Kenneth C. discovered a mechanic's lien on the property signed by defendant (count twelve) that was filed on January 29, 2014. Defendant also filed an affidavit of adverse possession on the property (counts thirteen and fourteen) stating he had possessed it since January 2013. A release on the mechanic's lien (count fifteen) was on the property on April 11, 2014.

No one lived on the property and there was no evidence of adverse possession.

F

Expert Testimony

Sacramento Police Lieutenant Tiffany King testified as an expert on real estate fraud. One type of fraud is to file false documents with title transfers to muddy the chain of title. This type of fraud could make a renter believe the fraudster is the property owner.

Another type of fraud is committed through mechanic's liens. Fraudulent mechanic's liens are filed to leverage money from the property owner or bank. Two hallmarks of the fraudulent lien are that the property owner does not know about it and the work listed on the lien cannot be verified. A fraudster often will find a distressed property, claim to be preserving it for the bank through upkeep, and then file a lien on the property, all without the owner's consent.

A third method is through a UCC-1 statement that is similar to a lien. The fraudster will claim the property owner had a debt, with the fraudster making a claim against the debt by listing the property as collateral. The fraudster then uses this as leverage to get money.

Adverse possession is a means for a person to openly and hostilely occupy property. The adverse possessor must build a fence around the property, occupy it for five years, and pay the property's taxes for that five-year period. Every case of adverse possession encountered by Lieutenant King in this case had been fraudulent.

Substitution of trustee occurs when a lender wants to change the entity servicing the loan. A bank executing a substitution of trustee typically has a bank vice-president sign it, rather than an "attorney on fact."

A deed of reconveyance is employed when a property's mortgage is paid off, removing any debt secured by the property.

A quitclaim deed is used to transfer an interest in a property to another person. A grant deed is often used instead of a quitclaim deed in order to make the transfer of the property more certain.

Cynthia Willis worked for the California Secretary of State and investigated the conduct of notary publics. She examined two of defendant's notary journals, finding one of them among the worst she had ever seen and the other to be missing journal entries and a thumbprint, which was "pretty egregious."

II

The Defense

Defendant, who represented himself, presented several witnesses who did not provide testimony relevant to the case.

Defendant's father, Alaric Scott, Sr., helped plan and establish Citizen's Auxiliary. He assisted in the cleaning up of well over a hundred properties through the company. Scott, Sr., and defendant were involved with the Sloughhouse Road property and had visited it together. He was familiar with S & B Electrical Maintenance, A & S Communications, and Vennemax.

Testifying on his own behalf, defendant, a notary public, claimed he acted as a good faith improver when he filed the documents.

DISCUSSION

I

Section 654

Defendant contends execution of the sentence should be stayed pursuant to section 654 on his convictions for filing a false claim in counts one, two, four, six through eight (pertaining to the Sloughhouse Road property), ten (pertaining to the Dornajo Way property), and twelve, fourteen, and fifteen (pertaining to the Pacific Hills Way property). He claims these acts were committed with other crimes with the same single intent and objective, to cloud the title to the pertinent piece of property.

Section 654 provides in pertinent part: “An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.” The statute does not prohibit multiple convictions for the same conduct, only multiple punishments. (*People v. Monarrez* (1998) 66 Cal.App.4th 710, 713.) “In such a case, the proper procedure is to stay execution of sentence on one of the offenses.” (*Ibid.*)

“In any section 654 inquiry, the court must initially ascertain the defendant’s objective and intent. [Citation.] ‘ “If he entertained multiple criminal objectives which were independent of and not merely incidental to each other, he may be punished for independent violations committed in pursuit of each objective even though the violations shared common acts or were parts of an otherwise indivisible course of conduct.” ’ [Citation.] ‘Whether the defendant maintained multiple criminal objectives is determined from all the circumstances and is primarily a question of fact for the trial court, whose finding will be upheld on appeal if there is any substantial evidence to support it.’ ” (*People v. Tom* (2018) 22 Cal.App.5th 250, 261.)

Section 115 states in pertinent part, “(a) Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony. [¶] . . . [¶] (d) For purposes of prosecution under this section, each act of procurement or of offering a false or forged instrument to be filed, registered, or recorded shall be considered a separately punishable offense.”

Ordinarily, section 654 prohibits multiple punishments for more than one offense where the offenses are committed during an “ ‘indivisible transaction’ ” having a single

criminal objective. (*People v. Gangemi* (1993) 13 Cal.App.4th 1790, 1799.) However, a different rule applies to offering false instruments for filing or recording in violation of section 115. (*Gangemi*, at p. 1800.) The Court of Appeal in *Gangemi* applied subdivision (d) of section 115 in the context of section 654 and concluded it created an exception to section 654. “This language demonstrates an express legislative intent to exclude section 115 from the penalty limitations of section 654. Thus, the Legislature has unmistakably authorized the imposition of separate penalties for each prohibited act even though they may be part of a continuous course of conduct and have the same objective. [Citation.] We conclude each false filing is separately punishable.” (*Gangemi*, at p. 1800.)

Defendant contends *Gangemi* is contrary to our decision in *People v. Kenefick* (2009) 170 Cal.App.4th 114. The defendant in *Kenefick* was convicted of 18 counts of theft, burglary, selling securities by false statement, and forgery. (*Id.* at p. 116.) We held that the sentence on two of the forgery counts must be stayed pursuant to section 654 because they were “part and parcel of the theft, securities fraud, and burglary,” with a single criminal intent, to take the victim’s money. (*Kenefick*, at p. 124.) *Kenefick* was a routine application of section 654, as it did not involve a crime with an exemption from section 654 like section 115, subdivision (d). Cases are not authority for propositions not considered therein (*Palmer v. GTE California, Inc.* (2003) 30 Cal.4th 1265, 1278), and *Kenefick* is not contrary to *Gangemi*. We find the ruling in *Gangemi* well-considered and apply it here. Accordingly, defendant can be punished for multiple violations of section 115.

As previously stated, subdivision (d) begins with, “For purposes of prosecution under this section” While this language allows execution of sentence for multiple

violations of section 115 notwithstanding section 654, it does not apply to sentencing on other crimes. Therefore, section 654 can apply when a defendant is convicted of violating section 115 and another statute if both crimes are part of a single criminal objective. Defendant was convicted of perjury (§ 118) in count three and filing a false document (§ 115) in count two, for the affidavit of adverse possession on the Sloughhouse Road property and was convicted of perjury in count fourteen and filing a false document in count thirteen for filing the affidavit of adverse possession on the Pacific Hills Way property. In both instances, the perjury and false filing offenses had the same objective, clouding the title to obtain leverage that could be exploited for gain. Notwithstanding subdivision (d), section 654 applies to sentencing for both sets of convictions.

When section 654 applies, the sentence for the lesser conviction must be imposed and execution stayed. (*People v. Deloza* (1998) 18 Cal.4th 585, 594; *People v. Alford* (2010) 180 Cal.App.4th 1463, 1473-1474.) The punishment for perjury is two, three, or four years (§ 126), while the punishment for filing a false document is 16 months, two or three years (§§ 115, subd. (a), 18, subd. (a)). We shall modify the judgment to stay execution of the sentence for the filing of the false documents convictions in counts two and thirteen.

II

Insufficient Evidence For Counts Four And Fifteen

Defendant contends there is insufficient evidence to support his convictions for filing false documents in counts four and fifteen because those counts involved filing the releases on the mechanic's liens for the Sloughhouse Road property (count four) and the Pacific Hills Way property (count fifteen). Defendant asserts that even if the underlying mechanic's liens for the two counts were fraudulent, it does not support a finding that the releases, which were properly treated as genuine, were fraudulent as well. We agree.

“ ‘When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence -- that is, evidence that is reasonable, credible, and of solid value -- from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] We presume in support of the judgment the existence of every fact the trier of fact reasonably could infer from the evidence. [Citation.] If the circumstances reasonably justify the trier of fact’s findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.] A reviewing court neither reweighs evidence nor reevaluates a witness’s credibility.’ ” (*People v. Covarrubias* (2016) 1 Cal.5th 838, 890.)

“ ‘[S]ection 115 was designed to prevent the recordation of spurious documents knowingly offered for record. [Citation.]’ [Citation.] ‘ “The core purpose of . . . section 115 is to protect the integrity and reliability of public records.” [Citations.] This purpose is served by an interpretation that prohibits any knowing falsification of public records.’ ” (*People v. Denman* (2013) 218 Cal.App.4th 800, 808; accord *Hudson v. Superior Court* (2017) 7 Cal.App.5th 999, 1010.)

The prosecution’s theory on counts four and fifteen was that these releases of the fraudulent mechanic’s liens were themselves fraudulent because both releases claimed the respective underlying liens being released were valid, thereby falsely asserting the validity of these mechanic’s liens. Defendant asserts he intended both releases to be genuine, causing the improper liens to be lifted. According to defendant, since he did not knowingly offer any false release, the convictions in counts four and fifteen must be reversed.

Section 115's breadth is illustrated by *Denman*. There, the "defendant filed quitclaim deeds to himself on property to which he admitted he had no title or interest. While defendant is technically correct that he attested in the quitclaim deed that he was only transferring whatever title or interest he possessed, it was clear based on the evidence he had absolutely no interest in the property. The documents themselves were false in that they transferred an interest that he did not have to himself and then he recorded the document, clouding the title of the true property owners. Adopting defendant's reasoning would be in direct contradiction with the purpose behind section 115 to preserve and protect the integrity of public records. Based on the purpose of the statute and the fact that section 115 has been broadly construed, the quitclaim deeds could reasonably be considered false documents by the jury." (*People v. Denman, supra*, 218 Cal.App.4th at p. 809.)

While broad, section 115's breadth does not contain the acts charged in counts four and fifteen. The releases purported to and did release the fraudulent liens. We know of no statutory or case authority requiring a person releasing a lien to make any delectations or implied guarantees that the released lien was itself valid. Releasing an improperly filed or even fraudulent lien helps the public good by terminating the lien. Prosecution for such a release could lead to fewer releases and perpetuate improper liens, contrary to section 115's purpose. While defendant may have intended to use them to cover his tracks as to the fraudulent mechanic's liens,³ he was unsuccessful in doing so, and his attempt to do this by filing the releases did not violate section 115. We shall reverse the section 115 convictions in counts four and fifteen for insufficient evidence.

³ Defendant in fact told the investigator that the lien on the Sloughhouse Road property was a mistake and used his release of the claim as proof.

III

Charging Variance

Defendant contends the conviction for filing a false document in count eight must be reversed because the charging document alleged the offense occurred on July 22, 2013, while the evidence shows the document in count eight, the second quitclaim deed on the Sloughhouse Road property, was rejected by the Recorder's Office on November 6, 2013. He claims the variances between the charging document and proof renders the evidence insufficient to support his conviction. He additionally contends the variance between pleading and proof deprived him of adequate notice, a violation of his due process right to prepare a defense.

The claim of a variance between pleading and proof must be raised at trial, or it is forfeited. (*People v. Maury* (2003) 30 Cal.4th 342, 427.) While defendant purports to raise an insufficient evidence argument, he does not argue that there was insufficient evidence he committed the act charged in count eight. The evidence shows defendant filed the fraudulent quitclaim deed on November 6, 2013, and the prosecutor argued defendant committed the crime in count eight on this date. He argues only that the proof at trial as to when he committed the act varied from the pleading. Defendant fails to show that he raised this point below, either to the trial court or to the jury. Therefore, the contention is forfeited.

Even if we were to consider defendant's due process claim on the merits, it would fail. " 'The test of the materiality of variance in an information is whether the pleading so fully and correctly informs a defendant of the offense with which he is charged that, taking into account the proof which is introduced against him, he is not misled in making his defense.' " (*People v. Maury, supra*, 30 Cal.4th at p. 427.) The information notified defendant he was charged in count eight with falsely filing the second quitclaim deed on the Sloughhouse Road Property. The quitclaim deed that formed the basis of this charge was filed by defendant, introduced at the preliminary hearing, and was provided to

defendant as part of pretrial discovery. Defendant was not prejudiced by the variance between the date of the crime in the pleading and the proof at trial.

DISPOSITION

The convictions for filing a false document in counts four and fifteen are reversed. The judgment is modified to stay execution of sentence in counts two and thirteen pursuant to section 654. The matter is remanded for resentencing. In all other respects, the judgment is affirmed.

/s/
Robie, J.

We concur:

/s/
Raye, P. J.

/s/
Renner, J.